

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO. 02:06cr222-WKW
)	
JELA SHERMARKIE MARSHALL)	

RESPONSE TO JELA SHERMARKIE MARSHALL'S MOTION TO SUPPRESS

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and hereby requests that this Honorable Court deny Defendant's Motion to Suppress. As grounds in support of this Response, the United States sets forth the following:

FACTS

On June 16, 2006, Officer Jason Barnes of the Opelika Police Department was patrolling the area of North Antioch Circle in Lee County, Alabama. While on patrol, he heard excessively loud music coming from a 1999 Chevrolet Tahoe. Officer Barnes stopped the vehicle for a violation of Opelika's noise ordinance.¹ Despite Marshall's contrary assertion, he was indeed cited for a noise ordinance violation.² Officer Barnes cited Marshall with a Uniform Non-Traffic Citation and Complaint, case number 06-005864. While citing Marshall, Officer Barnes smelled a strong odor of marijuana coming from the car. At this point, Barnes called for assistance with the traffic stop. Soon, Officer Craig Vickers arrived to assist Officer Barnes. Barnes and Vickers discussed the marijuana smell and Vickers looked through the driver's side window of Marshall's vehicle and saw,

¹See Opelika's Ordinance Number 19-453

²Marshall was provided a copy of the citation at page 58 of the discovery package.

in plain view, suspected marijuana on the backseat. Upon discovering the suspected marijuana, Marshall was arrested for Unlawful Possession of Marijuana.

Subsequent to a lawful search incident to his arrest, law enforcement recovered more than 2.2 pounds of marijuana, three electronic scales, a quantity of sandwich and gallon storage bags, and a Ruger .40 caliber semiautomatic pistol from Marshall's vehicle. Finally, as Marshall was being processed into the local jail, law enforcement recovered \$2,988.00 in cash from his person.

ANALYSIS

Despite alleging that Opelika police had no cause to stop him, Marshall completely fails to account for the Uniform Non-Traffic Citation and Complaint, case number 06-005864, issued on June 16, 2006, at 10:55 pm while Marshall was stopped at 719 Martin Luther King Blvd., Opelika, Alabama.³ Rather than disclosing and discussing this Uniform Non-Traffic Citation and Complaint, Marshall recklessly accuses police officers of "pre-text" and "fishing" for reasons to search his vehicle. In truth, Opelika police officers enforced a duly enacted noise ordinance and in the process discovered an armed drug dealer.

According to established law, the detention of a motorist is reasonable where probable cause exists to believe that a traffic violation has occurred. The fact that the police may be motivated to stop the vehicle which has committed a violation, because of a suspicion that the occupants have committed some other offense, is not a basis for invalidating the initial stop. Simply stated, the fact that the police may have some "ulterior motives" does not invalidate police conduct which is justified on the basis of probable cause. See Whren v. United States, 517 U.S. 806 (1996); United

³See exhibit "A".

States v. Griffin, 109 F.3d 706 (11th Cir. 1997); United States v. Holloman, 113 F.3d 192 (11th Cir. 1997).

In the case at bar, Officer Barnes stopped Marshall for a violation of a municipal noise ordinance. While citing him, Barnes detected the distinct smell of marijuana coming from Marshall's car. Upon looking in the car, in plain view, police found over 2.2 pounds of marijuana. The discovery of the marijuana led to the discovery of a loaded firearm and other indicia of drug trafficking.

Beyond pure speculation and conjecture, Marshall fails to allege any reason to suppress the evidence secured against him.

For the reasons stated above, the defendant's motion should be DENIED.

Respectfully submitted this 27th day of November, 2006.

LEURA G. CANARY
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Kevin Butler.

Respectfully submitted,

LEURA G. CANARY
UNITED STATES ATTORNEY

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State of Alabama Unified Judicial System		UNIFORM NON-TRAFFIC CITATION AND COMPLAINT			Case Number 06-005864	
ARJA-20 7/94		(For Scheduled Non-Traffic Violations or Misdemeanors)				
IN THE <u>MUNICIPAL</u> COURT OF <u>OPELIKA</u> , ALABAMA				Law Enforcement Agency/Organization or Department <u>OPELIKA POLICE DEPARTMENT</u>		
The undersigned complainant, being duly sworn, deposes and says that the person herein named committed the offense hereinafter set forth in that on or about: <div style="float: right; text-align: right;"> Month Day Year At Time <u>06</u> <u>15</u> <u>06</u> <u>05</u> <u>PM</u> </div>						
First <u>JELA</u>		Middle/Maiden <u>SHERMARKS</u>		Last <u>MARSHALL</u>		
Street <u>719 MARTIN LUTHER KING BLVD</u>						
City <u>OPELIKA</u>		State <u>AL</u>		Zip <u>36801</u>		
Driver's License Number <u>7243295</u>				State <u>AL</u>		Expiration Date <u>11/06/2008</u>
Height <u>5-6</u>		Weight <u>210</u>		Eyes <u>BRO</u>		Hair <u>BLK</u>
Social Security Number <u>423-19-9314</u>				Sex <u>M</u>		Race <u>B</u>
Name of Employer <u>C+M MOBILE DETAILING</u>				Address of Employer <u>1ST AVENUE, OPELIKA, AL</u>		
Did violate: <input checked="" type="checkbox"/> Opelika Ordinance Number <u>19-453</u>						
within the city limits or police jurisdiction of <u>OPELIKA</u>						
near the the following location (describe) <u>NORTH ANTIOCH CIRCLE</u> more particularly described in the						
DESCRIPTION OF OFFENSE section below						
DESCRIPTION OF OFFENSE						
Offense or Short Description of Offense: <u>EXCESSIVE LOUD NOISE</u>						
State Specific Facts Relating to Offense: <u>EXCESSIVE LOUD RADIO NOISE COMING FROM VEHICLE</u> <u>HEARD FROM OVER 50 FEET AWAY.</u>						
<u>1999 CHEVROLET TAHOE WHITE AL: V85L9</u>						
Sworn to and acknowledged before me this date		Month	Day	Year	Complainant's Signature	
Signature and Title of Judicial Officer				Officer I.D. <u>0314</u>	Agency O.R.I. <u>AL 0430200</u>	
COURT APPEARANCE INFORMATION						
<input checked="" type="checkbox"/> Court Appearance Required						
By signing this citation, I am promising to appear in court on the date and at the time specified below if a court appearance is not required, I may choose to plead guilty before a magistrate or by mail or in person, paying the required fine and court costs prior to my scheduled court date, in which event I do not have to appear in court. If I do not appear in court on the scheduled date and if I do not plead guilty and pay the required fine and costs prior to that date, I promise to pay an amount prescribed by law.						
I also understand that failure to appear or to plead guilty and pay the fine and costs may result in a warrant being issued for my arrest on the present charge and I may also be charged with second degree bail jumping.						
Court Appearance Date (if applicable)			Court Address		Telephone Number	
Month <u>09</u>	Day <u>11</u>	Year <u>06</u>	Time <u>1:30</u>	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	501 South Tenth Street P.O. Box 2485 Opelika, AL 36803-2485	334-705-5190
Defendant's Signature <u>ARRESTED</u>					Telephone Number	

NOTICE: FAILURE TO APPEAR IN COURT AND/OR FAILURE TO REMIT FINE AND COSTS WILL RESULT IN AN ARREST

**GOVERNMENT
EXHIBIT**A